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ESA ISSUES

A Legislative Focus



By Wally Murphy
US Fish & Wildlife Service

Today's Presentation

- ▣ Review of the Important Aspects of the ESA
 - The Act
 - The Agencies
 - The Regulations
- ▣ Legislative History of the ESA
 - Significant Amendments
- ▣ On the Horizon-Future Changes
 - Why is it so Challenging to change the ESA ?



The ACT-1973 as Amended

- ▣ Signed into law by President Richard Millhouse Nixon



The PURPOSE:

The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be preserved, to provide a program of conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

It is further declared to be the policy of the congress that Federal agencies shall cooperate with state and local agencies to resolve water issues in concert with conservation of endangered species.



18 Sections-41 Pages

1. Section 2-Findings, Purposes and Policy
2. Section 4-Listing and Recovery
 1. Species,
 2. Subspecies
 3. DPS/ESU
 4. Critical habitat
 5. 3 R's: Representation, redundancy, resiliency
3. Section 6-Cooperation with the States
 1. Section 6 Grants to States
4. Section 7-Interagency Cooperation
 1. 7(a)(1)
 2. 7(a)(2)
 1. BA's, BO's, Jeopardy, Federal Nexus
5. Section 9-Prohibited Acts
 1. Takings
 2. Adverse Modification
6. Sections 4-6-7 and 9 provide the Program of Conservation alluded to in Section 2



2 Agencies

Administer the ESA

1. Dept. Int.-US Fish and Wildlife Service: terrestrial species, fresh water species and migratory birds
2. Dept. Comm.-National Marine Fisheries Service: (NOAA), marine species such as pinnipeds and salmon



Legislative History of the ESA

- ▣ 1. ESA 1973 replaced two previous laws of 1966 and 1969, that were focused on listing.
- ▣ 2. Significant amendments in:
 - A. 1978: Cabinet Committee or “God Squad”
 - B. 1982: No Economics in Listing Decisions
 - C. 1988: Post-Delisting monitoring requirements

50 CFR 402.02 (1986)

- ▣ 1. Explains Sect. 7 Process
- ▣ 2. Provides a working definition of terms
- ▣ 3. This is where changes are most likely to come:
 - A. Definitions may change
 - B. Procedures may change
 - C. Process may be streamlined
 - ▣ 1. ON-Line Structured Sect 7 process for Action Agencies
- ▣ 4. Proposed changes will be based on our accumulated Working Knowledge since 1973

Why are Changes to the ESA SOOOO! DIFFICULT???

- ▣ A. Political Hot Potato
- ▣ B. Polarized Public
- ▣ C. Instant Press
- ▣ D. Difficult to get Votes



